

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SEP 21 PM 3:06
CLERK OF COURT

LISA K. DAVIS,

Plaintiff,

vs.

VAN RU CREDIT CORP.
and JORGE DIAZ
Defendants.

§ Civil Action No.

§ COMPLAINT

§ and

§ DEMAND FOR JURY TRIAL

4-05 CV-603-Y

(Unlawful Debt Collection Practices)

Preliminary Statement

1. Plaintiff, LISA K. DAVIS, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), to obtain statutory damages, actual damages, injunctive relief, declaratory relief, and other relief for the Defendants' violations of the FDCPA.

2. Defendant, VAN RU CREDIT CORP. and JORGE DIAZ attempted to collect a consumer debt ('Debt') allegedly owed by Plaintiff arising from a purported obligation to U.S. DEPARTMENT OF EDUCATION ('Debt') requiring Plaintiffs to pay money allegedly arising out of transactions in which money, property, insurance, or services were the subject thereof and the same were primarily for personal, family, or household purposes.

Jurisdiction and Venue

3. Jurisdiction of this Court attains pursuant to 15 U.S.C. §1692k (d), 28 U.S.C. §§1331 and 1337(a),

4. Venue in the NORTHERN District of Texas is proper under 28 U.S.C. § 1391(b)-(c) and because the acts and transactions occurred here and the Defendants transact business here through the use of telephones. The Plaintiff's address is 6100 Browning Drive #21106, North Richland Hills, TX 76180.

Parties

5. Plaintiff is a citizen of the State of Texas. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a (3).

6. VAN RU CREDIT CORPORATION of attempting to collect debt asserted to be due another in the NORTHERN District of Texas. The principal purpose of business of VAN RU CREDIT CORP. is the collection of consumer debts of others using the mails and telephone, and it regularly attempts to collect consumer debts for others. VAN RU CREDIT CORP. is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and has a principal place of business at 10024 Skokie Blvd., IL 60077.

7. Defendant JORGE DIAZ is an employee of the Defendant VAN RU CREDIT CORP. and is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

Factual Allegations

8. Beginning August 3rd, 2005, Defendant JORGE DIAZ on behalf of VAN RU CREDIT CORP. commenced calling the Plaintiff demanding payment on behalf of the U.S. Department of Education, which is admitted owed approximately \$4,709.00.

9. Defendant threatened that if payment arrangements were not made immediately that the Plaintiff's wages would be garnished and if he did not receive at least one of the suggested deposits, which the Plaintiff could not afford, by August 19th, that he would arrange for the Plaintiff to be arrested and sit in federal jail. He further threatened that he would add interest and penalties and the amount of the debt would never be paid. He further threatened that he would discover where the Plaintiff's children went to school and he would make sure they would never get any federal assistance of loans.

10. Despite requests not to call the Plaintiff at work, Defendant Diaz persistently called the Plaintiff at her place of work requesting a copy of her pay check so he could, as threatened, immediately garnish her wages.

11. Defendant Diaz even called the Plaintiff's husband and threatened him as well.

12. On August 24th, when Defendant Diaz determined that the Plaintiff was not going to requests, he called and yelled at the Plaintiff that if he did not receive a payment of \$274 by August 29th, he would garnish the Plaintiff's wages and make sure she would never be able to pay the obligation with the penalties he intended to add to the obligation.

13. At all times the Defendants were demanding payments in amounts more than she could reasonably afford, contrary to her rights under 20 U.S.C. § 1078-6 of the Higher Education Assistance Act ("HEAA");

10. The foregoing act and omission was undertaken on behalf of the Defendants by their agent, or employee, acting at all times relevant hereto within the scope of that relationship.

11. The foregoing act and omission of the Defendants was undertaken willfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiff.

12. The foregoing act and omission of the Defendant was undertaken indiscriminately, as part of their regular and routine collection efforts, and without regard to or consideration of the identity or rights of the Plaintiff.

First Claim for Relief

13. The Plaintiff repeats, re-alleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the FDCPA include, but are not limited to, the following:

- a. In violation of 15 U.S.C. § 1692d, and the "least sophisticated consumer standard," the Defendant engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt.
- b. In violation of 15 U.S.C. § 1692f, and the "least sophisticated consumer standard," the Defendant used unfair and unconscionable means to collect a debt.
- c. In violation 15 U.S.C. § 1692e by making false and misleading statements in an effort to collect a debt by demanding payments in amounts more than she could reasonably afford, contrary to her rights under 20 U.S.C. § 1078-6 of the Higher Education Assistance Act ("HEAA");

Second Claim for Relief

14. The Plaintiff repeats, re-alleges, and incorporates by reference the foregoing paragraphs. The Defendants violations of the TDCA include, but are not limited to the following:

- a. In violation of Tex. Fin. Code § 392.301(a)(8), the Defendants threatened to take (and/or did take) an action prohibited by law.
- b. In violation of Tex. Fin. Code § 392.304(a)(8), the Defendants misrepresented the character of a consumer debt.
- c. In violation of Tex. Fin. Code § 392.304(a)(14), the Defendants misrepresented the status or nature of the services rendered by the debt collector or the debt collector's business.

Under Tex. Fin. Code Ann. § 392.403, the Defendants violations of the TDCA render them jointly and severally liable to Plaintiff for statutory damages, actual damages, injunctive relief, declaratory relief, costs, and reasonable attorneys fees.

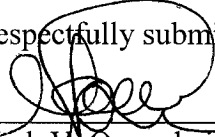
Prayer for Relief

WHEREFORE, the Plaintiff prays that this Court:

1. Declare that Defendants actions violate the FDCPA and the TDCA.
2. Enjoin the Defendants actions which violate the TDCA.
3. Enter judgment in favor of Plaintiff and against Defendants for statutory damages, actual damages, costs, and reasonable attorneys fees as provided by 15 U.S.C. § 1692k(a) and/or Tex. Fin. Code Ann. § 392.403
4. Grant such further relief as deemed just.

Dated: September 21, 2005

Respectfully submitted



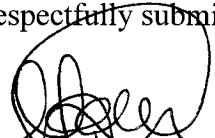
Mark V. Oppenheimer #44622CT
ATTORNEY FOR PLAINTIFF
3007 St. Frances Drive
Mansfield, Texas 76063
Voice: 817-808-6698

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action.

Dated: September 21, 2005.

Respectfully submitted,



Mark V. Oppenheimer #44622CT
3007 St. Frances Drive
Mansfield, Texas 76063
Voice: 817-808-6698

ATTORNEY FOR PLAINTIFF

JS 44 (Rev 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS LISA K. DAVIS		DEFENDANTS VAN RU CREDIT CORP. 10801 TAZ	
(b) County of Residence of First Listed Plaintiff <u>TARRANT</u> (EXCEPT IN U S PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>COOK</u> (IN U S PLAINTIFF CASES ONLY) NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED	
(c) Attorney's (Firm Name, Address, and Telephone Number) Mark Oppenheimer, 3007 St. Frances Drive, Mansfield, TX 76063 817-808-6698		Attorneys (If Known) <div style="text-align: center; font-size: 2em; font-weight: bold;">4-05 CV - 603 - Y</div>	

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)			
<input type="checkbox"/> 1 U S Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U S Government Not a Party)	Citizen of This State	<input checked="" type="checkbox"/> 1 PTF	<input type="checkbox"/> 1 DEF	Incorporated or Principal Place of Business In This State
<input type="checkbox"/> 2 U S Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 PTF	<input checked="" type="checkbox"/> 2 DEF	Incorporated and Principal Place of Business In Another State
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF	<input type="checkbox"/> 3 DEF	Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R R & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U S Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property
CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition				

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

Cite the U S Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

VI. CAUSE OF ACTION	Brief description of cause this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA")
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F R C P 23	DEMAND \$ Statutory	CHECK YES only if demanded in complaint JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions)	JUDGE	DOCKET NUMBER
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DATE 9/21/2005 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 53512 AMOUNT 750- APPLYING IFP JUDGE 3924 MAG JUDGE

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below, federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings (1) Cases which originate in the United States district courts.

Removed from State Court (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**
Example: U.S. Civil Statute 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.